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September 17, 2014

BY ECF

Hon. Vernon S. Broderick
United States District Court
Southern District of New York
Thurgood Marshall United States Courthouse
40 Foley Square, Room 415
New York, NY 10007

RE: *Senisi v. Houghton Mifflin Harcourt Publishing Company,*
No. 13-cv-2891 (VSB).

Dear Judge Broderick:

In advance of the October 1, 2014, post-discovery status conference, Defendant Houghton Mifflin Harcourt Publishing Company ("HMH") respectfully submits this summary of the status of this case. As discussed in more detail below, counsel for the HMH and Plaintiff were unable to reach agreement on the content of the report to be provided to the Court.

Consistent with this Court's March 13, 2014, Case Management Plan and Scheduling Order (Doc 27), HMH provides the following update on the status of this matter:

Discovery in this matter closed on September 5, 2014. (Doc. No. 27.) HMH intends to move for summary judgment pursuant to Federal Rule of Civil Procedure 56 on all or nearly all of the claims asserted in the Complaint. Accordingly, pursuant to the schedule adopted by this Court, HMH submitted a letter on September 12, 2014, providing the grounds for its summary judgment motion and to request a briefing schedule. (Dkt. No. 39.) Plaintiff did not file a letter.

The parties have not engaged in settlement discussions since this case was commenced in April 2013.

The above text was forwarded to counsel for Plaintiff on September 16, 2014. Earlier today, September 17, Plaintiff's counsel forwarded the attached proposed redline of HMH's report, indicating that Plaintiff intends to submit a separate letter later today responding to HMH's letter of September 12, 2014, regarding its intended summary judgment

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motion. Plaintiff's counsel then goes on to summarize arguments Plaintiff apparently intends to include in her separate letter to the Court to be filed later today, and makes certain inflammatory and unsupported claims regarding HMH's conduct both before the case was filed and in the course of discovery. HMH respectfully submits that Plaintiff's proposed language is entirely inappropriate in a joint submission to the Court. As reflected in the attached email correspondence also of today's date, HMH asked that the added language be stricken from the joint letter, and Plaintiff's counsel would not agree to its deletion. For that reason the parties were unable to agree on a joint submission and write separately.

At the October 1, 2014, conference, HMH will be pleased to address any questions the Court may have regarding its motion for summary judgment.

Respectfully submitted,



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cc: Kevin McCulloch
Danial Nelson

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Thurgood Marshall United States Courthouse
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RE: *Senisi v. Houghton Mifflin Harcourt Publishing Company*,
No. 13-cv-2891 (VSB).

Dear Judge Broderick:

In advance of the October 1, 2014 post-discovery status conference, the Parties submit this joint summary of the status of this case.

Discovery in this matter closed on September 5, 2014. (Doc. No. 27.) HMH intends to move for summary judgment pursuant to Federal Rule of Civil Procedure 56 on all or nearly all of the claims asserted in the Complaint. Accordingly, pursuant to the schedule adopted by this Court, HMH submitted a letter on September 12, 2014 providing the grounds for its summary judgment motion and to request a briefing schedule. (Dkt. No. 39.) Plaintiff intends to submit its letter responding to HMH's pre-motion letter today, September 17, 2014. Among other things, Plaintiff contends that HMH's letter is too vague to allow a meaningful response and thus Plaintiff has requested that the Court require the parties to meet and confer in good faith prior to the pre-motion conference to discuss the specific issues HMH intends to address in its motion at which point Plaintiff, as Plaintiff's counsel repeatedly has advised during this litigation, may agree to withdraw or voluntarily dismiss certain claims. Such a meeting between the parties is particularly needed here given that Plaintiff's claims were brought "upon information and belief" due to HMH's lack of pre-litigation cooperation and HMH produced almost no documents in discovery in this case until the final day of discovery at which point it produced 54,000

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pages of materials that it apparently had withheld until the end of discovery to try to sandbag the civil discovery process did not file a letter.

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The parties have not engaged in settlement discussions since this case was commenced in April 2013.

Respectfully submitted,

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Attorney for Plaintiff Ellen Senisi

| cc: Kevin McCulloch
Danial Nelson

Napolitano, Steven F (NYC)

From: Kevin McCulloch <kmcculloch@nelsonmcculloch.com>
Sent: Wednesday, September 17, 2014 2:01 PM
To: Napolitano, Steven F (NYC); Reitmeier, Emily A (CHI); dnelson@nelsonmcculloch.com; layala@nmiplaw.com
Cc: Pehlke, David R (WAS); layala@nmiplaw.com
Subject: RE: Senisi September 17, 2014 Letter to the Court

We don't agree.

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From: Napolitano, Steven F [mailto:Steven.Napolitano@skadden.com]
Sent: Wednesday, September 17, 2014 1:53 PM
To: 'Kevin McCulloch'; Reitmeier, Emily A; dnelson@nelsonmcculloch.com; layala@nmiplaw.com
Cc: Pehlke, David R; layala@nmiplaw.com
Subject: RE: Senisi September 17, 2014 Letter to the Court

Kevin-

Your proposed addition – including charges that my client "sandbagged the discovery process" – are entirely inappropriate in a joint status letter to the court. All that is proper here is the simple statement that you intend to separately respond later today to our letter of last week. That's your letter, and you can put whatever argument you want in it. I would suggest, however, dropping unprofessional and unhelpful charges like sandbagging. We will respond more fully to that letter as appropriate.

Please let me know if you agree to us deleting the material beginning with "Among other things" Otherwise we will write separately.

Steve

From: Kevin McCulloch [<mailto:kmcculloch@nelsonmcculloch.com>]
Sent: Wednesday, September 17, 2014 1:21 PM
To: Reitmeier, Emily A (CHI); dnelson@nelsonmcculloch.com; layala@nmiplaw.com
Cc: Napolitano, Steven F (NYC); Pehlke, David R (WAS); layala@nmiplaw.com
Subject: RE: Senisi September 17, 2014 Letter to the Court

Our redlines are attached.

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From: Reitmeier, Emily A [<mailto:Emily.Reitmeier@skadden.com>]
Sent: Tuesday, September 16, 2014 3:06 PM
To: 'Kevin P. McCulloch'; dnelson@nelsonmcculloch.com
Cc: Napolitano, Steven F; Pehlke, David R
Subject: Senisi September 17, 2014 Letter to the Court

Dan and Kevin-

Attached is a proposed joint letter to submit to the court tomorrow. Please let us know if you have any comments.

Thanks,

Emily

Emily A. Reitmeier

emily.reitmeier@skadden.com

